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Attorneys for Plaintiff
WALTER DELSON

** Defendants' counsel listed after the caption*

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WALTER DELSON,

Plaintiff,

v.

CYCT MANAGEMENT GROUP,
INC.; KINGS TRIUMPH, LLC;
LINDA YU- LING TU TRUST;
LALEH HERAVI dba Fondue Fred;
and DOES 1-10, Inclusive,

Defendants.

Case No. C11-03781 MEJ

Civil Rights

**CONSENT DECREE AND
~~PROPOSED~~ ORDER AS TO
INJUNCTIVE RELIEF ONLY**

LOW BALL & LYNCH
LAURA FLYNN, ESQ. (State Bar No. 148511)
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San Francisco, California 94111
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Attorneys for Defendants
CYCT MANAGEMENT GROUP, INC.;
KINGS TRIUMPH, LLC; and
LINDA YU- LING TU TRUST

SCHEER LAW GROUP, LLP
JONATHAN SEIGEL, ESQ. (State Bar No. 168224)
155 N. Redwood Drive, Suite 100

CONSENT DECREE & ORDER AS
TO INJUNCTIVE RELIEF ONLY
Case No. C11-3781 MEJ

1 San Rafael, California 94903
2 Telephone: 415/491-8900
3 Facsimile: 415/491-8910

4 Attorneys for Defendant
5 LALEH HERAVI dba Fondue Fred

6 1. Plaintiff WALTER DELSON filed a Complaint in this action on
7 August 1, 2011 to obtain recovery of damages for his discriminatory experiences,
8 denial of access, and denial of his civil rights, and to enforce provisions of the
9 Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, and
10 California civil rights laws against defendants CYCT MANAGEMENT GROUP,
11 INC.; KINGS TRIUMPH, LLC; LINDA YU- LING TU TRUST; LALEH
12 HERAVI dba Fondue Fred (together sometimes "Defendants"), relating to the
13 condition of Defendants' public accommodations as of February 20, 2011, and
14 continuing. Plaintiff has alleged that Defendants violated Title III of the ADA and
15 sections 51, 52, 54, 54.1, 54.3, and 55 of the California Civil Code, and sections
16 19955 *et seq.* of the California Health & Safety Code by failing to provide full and
17 equal access to their facilities at 2556 Telegraph Ave., Berkeley, California.

18 2. Plaintiff and Defendants (together sometimes the "Parties") hereby
19 enter into this Consent Decree and Order for the purpose of resolving injunctive
20 relief aspects of this lawsuit without the need for protracted litigation. Issues of
21 damages and attorneys' fees, costs, and expenses will be the subject of further
22 negotiations and litigation if necessary. This Consent Decree and Order is not an
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1 admission of liability on behalf of Defendants. Defendants dispute that the
2 injunctive relief is mandated by the provisions of the ADA, the California Civil
3 Code, and/or the California Health & Safety Code.
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6 **JURISDICTION:**

7 3. The Parties to this Consent Decree and Order agree that the Court has
8 jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations
9 of the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.*
10 and pursuant to supplemental jurisdiction for alleged violations of California
11 Health & Safety Code sections 19955 *et seq.*; Title 24, California Code of
12 Regulations; and California Civil Code sections 51, 52, 54, 54.1, 54.3, and 55.
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14 4. In order to avoid the costs, expense, and uncertainty of protracted
15 litigation, the Parties to this Consent Decree and Order agree to entry of this
16 Consent Decree and Order to resolve all claims regarding injunctive relief and
17 damages raised in the Complaint filed with this Court. Accordingly, the Parties
18 agree to the entry of this Order without trial or further adjudication of any issues of
19 fact or law concerning Plaintiff's claims for injunctive relief and damages.
20

21 WHEREFORE, the Parties to this Consent Decree hereby agree and stipulate
22 to the Court's entry of this Consent Decree and Order, which provide as follows:
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1 **SETTLEMENT OF INJUNCTIVE RELIEF:**

2 5. This Order shall be a full, complete, and final disposition and
3 settlement of Plaintiff's claims against Defendants for injunctive relief and
4 damages that have arisen out of the subject Complaint.
5

6 6. The Parties agree and stipulate that the corrective work will be
7 performed in compliance with the applicable standards, codes, and regulations for
8 disabled access, unless other standards are specifically agreed to in this Consent
9 Decree and Order.
10

11 a) **Remedial Measures:** Defendants will perform the following
12 corrective work at the subject property, assuming the subject property is still a
13 public accommodation as defined by the ADA:
14

15 i) **Peter Margen Report.** A draft report by Plaintiff's
16 access consultant, Peter Margen, is attached and incorporated
17 herewith as **Attachment A**. Defendants CYCT
18 MANAGEMENT GROUP, INC.; KINGS TRIUMPH, LLC;
19 and LINDA YU- LING TU TRUST ("Landlord Defendants")
20 agree to undertake Item Nos. 1.4 and 1.7 in **Attachment A**.
21 Item No. 1.7 to be completed by January 4, 2013. Defendant
22 LALEH HERAVI dba Fondue Fred agrees to undertake Item
23 Nos. 2.1, 2.2, 2.3, and 2.4 in **Attachment A**.
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1 ii) **Blake Street Entrance.** Landlord Defendants agree to
2 make the following changes to the Blake Street entrance: (1)
3 install directional signage alerting patrons of the designated
4 entrance at Telegraph Avenue and (2) install an "Emergency
5 Exit Only" sign on the inside of the door.

6 iii) **Path of Travel.** Landlord Defendants agree to grind
7 down and/or re-grout a 5'-wide designated accessible path of
8 travel within the subject property from the public right of way
9 to FinFine Ethiopian Restaurant and Fondue Fred Restaurant
10 and between the two restaurants. This designated accessible
11 path of travel will be marked by a colored stain for the brick
12 surface, unless the entire brick common area is grinded down
13 and/or regouted. This work will be completed by January 4,
14 2013.

15 iv) **Accessible Restroom.** Subject to the ratification of this
16 specific provision (paragraph 6.a.iv) by FinFine Ethiopian
17 Restaurant, Landlord Defendants agree to make the following
18 changes: (1) designate the restroom located in the FinFine
19 Ethiopian Restaurant as the designated accessible restroom for
20 the subject property; (2) update this restroom so that it is
21 the subject property; (2) update this restroom so that it is
22 the subject property; (2) update this restroom so that it is
23 the subject property; (2) update this restroom so that it is
24 the subject property; (2) update this restroom so that it is
25 the subject property; (2) update this restroom so that it is
26 the subject property; (2) update this restroom so that it is
27 the subject property; (2) update this restroom so that it is
28 the subject property; (2) update this restroom so that it is

1 compliant with California Title 24 Accessibility Standards and
2 the Americans With Disabilities Accessibility Guidelines
3 ("ADAAG") applicable in 1998; (3) install signage in all
4 restaurants located within the subject property alerting patrons
5 that the designated accessible restroom is located in FinFine
6 Ethiopian Restaurant; (4) at times when FinFine Ethiopian
7 Restaurant is closed but the restaurants located within the
8 subject property are open, install temporary signage indicating
9 that there are no accessible restrooms; and (5) by June 4, 2015,
10 build an accessible restroom within the subject property that is
11 fully compliant with all state and federal accessibility
12 guidelines applicable at the time of construction.

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17 **v) Ramp to Existing Patron Restrooms.** Landlord
18 Defendants agree to remove the ramp leading to the existing
19 patron restrooms on the east side of the subject property.
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21 **b) Timing of Injunctive Relief:** Defendants will complete all
22 work by September 4, 2012 unless otherwise specified hereinabove. In the event
23 that unforeseen difficulties prevent Defendants from completing any of the agreed-
24 upon injunctive relief, Defendants or their counsel will notify Plaintiff's counsel in
25 writing within 15 days of discovering the delay. Plaintiff will have thirty (30) days
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1 to investigate and meet and confer, and to approve the delay by stipulation or
2 otherwise respond to Defendants' notice. If the Parties cannot reach agreement
3 regarding the delay within an additional fifteen days, Plaintiff may seek
4 enforcement by the Court. Defendants or their counsel will notify Plaintiff's
5 counsel when the corrective work is completed, and in any case will provide a
6 status report to Plaintiff's counsel no later than 120 days from the entry of this
7 Consent Decree.
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10 c) Defendants will notify Plaintiff in writing at the end of 120
11 days from the Parties' signing of this Consent Decree and Order as to the current
12 status of agreed-to injunctive relief, and every 90 days thereafter until all access is
13 provided. If Defendants fail to provide injunctive relief on the agreed upon
14 timetable and/or fail to provide timely written status notification, and Plaintiff files
15 a motion with the Court to obtain compliance with these terms, Plaintiff reserves
16 the right to seek additional attorneys' fees for any compliance work necessitated by
17 Defendants' failure to keep this agreement. If the Parties disagree, such fees shall
18 be set by the Court. Plaintiff agrees to provide Defendants, through their
19 undersigned counsel, with at least 5 business days notice to cure any default under
20 this Consent Decree & Order before seeking relief from the Court to obtain
21 compliance with the terms of this Consent Decree & Order.
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DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES, AND COSTS:

7. The Parties have also reached an agreement regarding Plaintiff's claims for damages. Defendant LALEH HERAVI shall pay to Plaintiff a total of three thousand dollars and no cents (\$3,000) and defendants CYCT MANAGEMENT GROUP, INC.; KINGS TRIUMPH, LLC; and LINDA YU-LING TU TRUST shall pay to Plaintiff a total of twelve thousand dollars and no cents (\$12,000). These checks are to be made out to "PAUL L. REIN IN TRUST FOR WALTER DELSON." Payment of all amounts described in this paragraph are to be made by July 16, 2012 -- delivered to the Law Offices of Paul L. Rein, 200 Lakeside Drive, Suite A, Oakland, CA 94612. Plaintiff's attorneys will supply a W-9 form to Defendants for all payments described in this paragraph. The Parties have not reached any agreement regarding Plaintiff's claims for attorneys' fees, litigation expenses, and costs. These matters will be the subject of future negotiation or litigation as necessary. The Parties jointly stipulate and request that the Court not dismiss the case in its entirety as these issues remain unresolved.

ENTIRE CONSENT DECREE AND ORDER:

8. This Consent Decree and Order and **Attachment A** constitute the entire agreement between the signing Parties on the matters of injunctive relief and

1 damages, and no other statement, promise, or agreement, either written or oral,
2 made by any of the Parties or agents of any of the Parties that is not contained in
3 this written Consent Decree and Order, shall be enforceable regarding the matters
4 of injunctive relief and damages described herein. This Consent Decree and Order
5 applies to Plaintiff's claims for injunctive relief and damages only and does not
6 resolve Plaintiff's claims for attorneys' fees, litigation expenses, and costs, which
7 shall be the subject of further negotiation and/or litigation. The Parties stipulate
8 that all Parties request that the Court not dismiss the case in its entirety as issues of
9 statutory attorneys' fees, litigation expenses, and costs are still before the Court.
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14 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND**
15 **SUCCESSORS IN INTEREST:**

16 9. This Consent Decree and Order shall be binding on Plaintiff,
17 Defendants, and any successors-in-interest. Defendants have a duty to so notify all
18 such successors-in-interest, including without limitation any new tenants of the
19 space currently occupied by FinFine Ethiopian Restaurant, of the existence and
20 terms of this Consent Decree and Order during the period of the Court's
21 jurisdiction of this Consent Decree and Order.
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**MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS
TO INJUNCTIVE RELIEF ONLY:**

10. Each of the Parties to this Consent Decree and Order understands and agrees that there is a risk and possibility that, subsequent to the execution of this Consent Decree and Order, any or all of them will incur, suffer, or experience some further loss or damage with respect to the lawsuit that is unknown or unanticipated at the time this Consent Decree and Order is signed. Except for all obligations required in this Consent Decree and Order, the Parties intend that this Consent Decree and Order apply to all such further loss with respect to the lawsuit, except those caused by the Parties subsequent to the execution of this Consent Decree and Order. Therefore, except for all obligations required in this Consent Decree and Order, this Consent Decree and Order shall apply to and cover any and all claims, demands, actions, and causes of action by the Parties to this Consent Decree with respect to the lawsuit, whether the same are known, unknown, or hereafter discovered or ascertained, and the provisions of Section 1542 of the California Civil Code are hereby expressly waived. Section 1542 provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO
CLAIMS WHICH THE CREDITOR DOES NOT
KNOW OR SUSPECT TO EXIST IN HIS OR HER
FAVOR AT THE TIME OF EXECUTING THE
RELEASE, WHICH IF KNOWN BY HIM OR HER
MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.**

1 This waiver applies to the injunctive relief and damages aspects of this action only
2 and does not include resolution of Plaintiff's claims for attorneys' fees, litigation
3 expenses, and costs.
4

5 11. Except for all obligations required in this Consent Decree and Order –
6 and exclusive of the referenced continuing claims for statutory attorneys' fees,
7 litigation expenses, and costs – each of the Parties to this Consent Decree and
8 Order, on behalf of each, their respective agents, representatives, predecessors,
9 successors, heirs, partners, and assigns, releases and forever discharges each other
10 Party and all officers, directors, shareholders, subsidiaries, joint venturers,
11 stockholders, partners, parent companies, employees, agents, attorneys, insurance
12 carriers, heirs, predecessors, and representatives of each other Party, from all
13 claims, demands, actions, and causes of action of whatever kind or nature,
14 presently known or unknown, arising out of or in any way connected with the
15 lawsuit. Notwithstanding the foregoing, the Defendants do not waive or release,
16 but instead explicitly preserve, their rights to seek contribution, apportionment,
17 indemnification, and all other appropriate relief from each other in connection with
18 Plaintiff's claims for attorney fees, litigation expenses, and costs.
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TERM OF THE CONSENT DECREE AND ORDER:

12. This Consent Decree and Order shall be in full force and effect and the Court shall retain jurisdiction of this action for a period of eighteen (18) months after the date of entry of this Consent Decree and Order by the Court, or until the injunctive relief contemplated by this Order is completed, whichever occurs later.

SEVERABILITY:

13. If any term of this Consent Decree and Order is determined by any court to be unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in full force and effect.

SIGNATORIES BIND PARTIES:

14. Signatories on the behalf of the Parties represent that they are authorized to bind the Parties to this Consent Decree and Order. This Consent Decree and Order may be signed in counterparts and a facsimile signature shall have the same force and effect as an original signature.

END OF PAGE.

**SIGNATURES CONTINUE ON THE NEXT PAGE
AND ORDER IS AT THE END OF THE DOCUMENT.**

1 Dated: 6/4/12, 2012

PLAINTIFF WALTER DELSON

Paul Rein for Walter Delson
WALTER DELSON
per written power of attorney

2 Dated: 6/4, 2012

DEFENDANT CYCT MANAGEMENT GROUP,
INC.

By: [Signature]

Print name: Charles Tu

Title: President

3 Dated: 6/4, 2012

DEFENDANT KINGS TRIUMPH, LLC

By: [Signature]

Print name: Charles Tu

Title: on behalf of

4 Dated: 6/4, 2012

DEFENDANT LINDA YU-LING TU TRUST

By: [Signature]

Print name: Charles Tu

Title: on behalf of

5 Dated: 6/4, 2012

DEFENDANT LALEH HERAVI

[Signature]

LALEH HERAVI

1 APPROVED AS TO FORM:

2
3 DATED: 6/4, 2012

LAW OFFICES OF PAUL L. REIN

4
5 By: 

6 Catherine Cabalo, Esq.
7 Attorneys for Plaintiff
8 WALTER DELSON

9 DATED: 6/4, 2012

LOW BALL & LYNCH

10
11 By: 

12 Laura Flynn, Esq.
13 Attorneys for Defendants
14 CYCT MANAGEMENT GROUP, INC.;
15 KINGS TRIUMPH, LLC; and LINDA YU-
16 LING TU TRUST

17
18 DATED: 6/4, 2012

SCHEER LAW GROUP

19
20 By: 

21 Jonathan Seigel, Esq.
22 Attorneys for Defendant
23 LALEH HERAVI dba Fondue Fred
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ORDER

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

Dated: June 11, 2012



Honorable Maria Elena James
United States Magistrate Judge